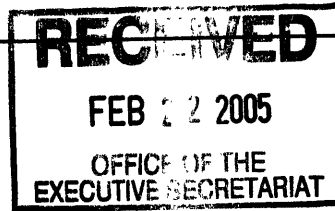


R. Scott Jerger

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February 14, 2005

VIA CERTIFIED MAIL

Gary Bonestroo, Owner
Bonestroo Dairy, LLC
326-B NM 467
Portales, NM 88130

Bruce Bonestroo, Registered Agent
Bonestroo Dairy, LLC
1400 Lechuga Rd
Mesquite, NM 88048

Re: Sixty-day Notice of Violations of the Clean Water Act

Dear Messrs. Bonestroo,

This letter provides you with a supplemental notice of intent of Concerned Citizens for Clean Water, Inc., a New Mexico not-for-profit corporation, and the Sierra Club (collectively "Concerned Citizens") to file a citizen suit against the Bonestroo Dairy, located at 326-A, NM 467, Portales, NM, 88130, pursuant to section 505(a)(1)(A) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A). This notice supplements, and does not supercede, Concerned Citizens' notice letter dated December 16, 2004. We plan on filing suit very soon, and do not intend to wait another 60 days.

This lawsuit will allege that Gary Bonestroo, Bruce Bonestroo and the Bonestroo Dairy, LLC (collectively referred to as "Bonestroo Dairy"), have violated and continue to violate the CWA, EPA's CWA implementing regulations, and applicable state water pollution control laws, including but not limited to state water quality standards. The Bonestroo Dairy is a large Concentrated Animal Feeding Operation ("CAFO") as defined by 40 C.F.R. 122.23. CAFOs are considered point sources under the CWA. 33 U.S.C. 1362 (14).

Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States unless such discharge is permitted in a National Pollutant Discharge Elimination System ("NPDES") permit. CAFO NPDES permits contain effluent limitations pursuant

to Section 304 of the CWA, 33 U.S.C. § 1314 that establish limitations on the discharge of pollutants from CAFOs on a national basis.

All dairy CAFOs in operation prior to April 14, 2003 that contain over 700 mature dairy cows must have an NPDES permit in order to operate. 40 C.F.R. § 122.23(d), (g). The national effluent limitations for large CAFOs prohibit any discharge from CAFO production areas except precipitation-caused discharges provided that the CAFO operation can prove that the production area is designed and maintained to contain all manure and process wastewater in addition to the runoff from a 25-year, 24-hour rainfall event and that the production area is operated according to specific best management practices and record-keeping requirements. 40 C.F.R. § 412.31(a)(1).

For the land application area, the national effluent limitations for large CAFOs prohibit any discharge from of any manure or process wastewater unless the discharge is the result of precipitation and the CAFO owner can document that all land application of waste conforms to nutrient management practices that ensure the beneficial use of waste through nutrient uptake by fertilized crops at agronomic rates. 40 C.F.R. § 122.23(e).

Additionally, Bonestroo Dairy is subject to national performance standards under 33 U.S.C. 1316. As an industrial facility subject to effluent limitations for storm water, Bonestroo Dairy is required to have an individual NPDES storm water permit for storm water discharges. Since the Bonestroo Dairy facility is not designed and constructed to contain the requisite process waste and storm water in the event of a 25-year, 24-hour storm event, an industrial storm water NPDES permit is required at this time.

Bonestroo Dairy is not designed, constructed or operated to contain a discharge in the event of a 25-year, 24-hour storm event. Therefore, Concerned Citizens believes that the Bonestroo Dairy has discharged, and continues to discharge, pollutants through a point source or point sources into waters of the United States including springs, wetlands, playa lakes, streams and irrigation and drainage canals, all of which eventually discharge to the Brazos River. Bonestroo Dairy has discharged, and continues to discharge pollutants including, but not limited to, liquid and solid animal wastes. Such wastes contain, among other pollutants, fecal coliform and E. coli bacteria, other pathogenic substances, phosphorus, ammonia, nitrogen, nitrates and suspended solids and alter water quality indicator parameters such as biochemical oxygen demand and pH. Bonestroo Dairy has never obtained a NPDES permit for such discharges and even if Bonestroo Dairy has obtained a NPDES permit, discharges of the type

that have occurred, and are likely to continue to occur, from the facility could not be, and have not been, permitted under federal law.

Illegal discharges and violations of the Clean Water Act include:

- (1) Failure to apply for an NPDES permit from EPA.
- (2) Operating without an NPDES permit in violation of an effluent limitation pursuant to 33 U.S.C. § 1365(f).
- (3) Failure to obtain an NPDES permit for industrial storm water discharges.
- (4) Failure to develop a comprehensive nutrient management plan ("CNMP") for land applied waste.
- (5) Failure to provide liners and liner certifications for all six storm water retention control structures.
- (6) Failure to provide liner certification for the two process wastewater lagoons.
- (7) Each and every discharge from the Bonestroo Dairy must be reported to the United States Environmental Protection Agency and the New Mexico Environment Department. Bonestroo Dairy has failed to comply with these and other similar reporting requirements.
- (8) NMED has specifically found that the Bonestroo Dairy facility is not designed and constructed to contain waste and stormwater in the event of a 25-year, 24-hour storm event and the calculations performed by your own consultant confirm this conclusion. Therefore, process wastewater, storm water and irrigation effluent has discharged and will continue to discharge from the facility to the Boone Draw and eventually to the Brazos River.
- (9) Violating effluent limitations and standards without an NPDES permit including, but not limited to, production area best management practices and land application area best management practices pursuant to 33 U.S.C. 1314 and 40 C.F.R. §§ 412.31(a), 122.23(e).
- (10) Failure to maintain adequate operational and maintenance documentation for the facility (such as freeboard measurements, irrigation records, documentation of application of waste below agronomic rates, soil samples, off-

site manure removal logs, nutrient analyses of wastes from the facility, etc.) in violation of federal law.

- (11) Failure to construct adequate retention control structures to contain the runoff from the south pen area.
- (12) Failure to document that waste is applied at agronomic rates.
- (13) Failure to conduct manure and soil sampling for nitrogen and phosphorus.
- (14) Failure to conduct periodic inspections of land application equipment for leaks.
- (15) Failure to document "no significant hydrologic connection" between the facility and waters of the United States.

Concerned Citizens believes and alleges that a history of violations, similar in type and nature to the violations listed above, and if different, all related to improper construction, operation and maintenance of the Bonestroo Dairy, has continued from at least December 16, 1999 to the present. Such violations are known to Bonestroo Dairy and may be included in future legal actions by Concerned Citizens. Such discharges may only be known to Bonestroo Dairy and eyewitnesses to be determined since such discharges were not reported by Bonestroo Dairy as required by law.

We intend, at the close of the sixty (60) day notice period to file a citizen suit under Section 505 of the CWA against Bonestroo Dairy for the statutory maximum of \$27,500 per day for each violation stated above until March 15, 2004, and \$32,500 thereafter, which occurred since December 16, 1999 in addition to those which have occurred of which you are aware and those occurring subsequent to this letter, plus injunctive and remedial relief, costs, attorney and expert witness fees, and such other relief as may be appropriate.

Persons Giving Notice

The full name, address, and telephone number of the party providing this notice is:

Concerned Citizens for Clean Water, Inc.
P.O. Box 115
Cloudcroft, NM 88317-0115
Telephone Number: (505) 687-3022

Sierra Club, Rio Grande Chapter
1472 S. St. Francis Drive
Santa Fe, NM 87505
Phone: (505) 983 2703

Sierra Club Environmental Law Program
85 Second Street, 2d Floor
San Francisco, CA 94105-3441
Phone: (415) 977-5680

The attorneys representing Concerned Citizens in this notice are:

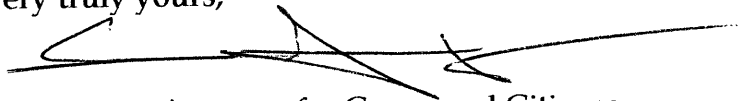
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During the sixty (60) day notice period, Concerned Citizens will be available to discuss effective remedies and actions that might be taken to assure Bonestroo Dairy's compliance in the future with the CWA. If you wish to discuss any aspect of this notice or to discuss settlement of this matter prior to commencement of suit, please contact the undersigned.

Very truly yours,



Scott Jerger, Attorney for Concerned Citizens

COPIES TO:

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Ron Curry, Secretary
New Mexico Environment Department
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